

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Chapter 7

EDWARD F. MILLER,

Case No. 18-22449 (RDD)

Debtor.

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OPPOSITION OF TRUSTEE, MARK S. TULIS TO EMERGENCY MOTION OF NON-DEBTOR GIOVANNA BATTAGLIA A/K/A GIOVANNA LAMPO ("GIOVANNA BATTAGLIA") PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9006(C) FOR AN ORDER SHORTENING NOTICE PERIOD AND SCHEDULING A HEARING ON THE MOTION OF GIOVANNA BATTAGLIA TO (1) QUASH THE SUBPOENA ISSUED BY SONIC ARTS ENTERTAINMENT, LLC AND THE CHAPTER 7 TRUSTEE; AND (2) FURTHER OBJECTING TO THE 2004 MOTION AND SEEKING AN ORDER VACATING THE COURT'S ORDER GRANTING THE 2004 MOTION OF SONIC ARTS ENTERTAINMENT, LLC AND IN FURTHER SUPPORT OF THE UNDERLYING RULE 2004 APPLICATION

Mark S. Tulis, as trustee ("**Trustee**") of the estate of Edward F. Miller ("**Debtor**"), for his opposition to the Emergency Motion of Non-Debtor Giovanna Battaglia a/k/a Giovanna Lampo ("Giovanna Battaglia") Pursuant to Federal Rule of Bankruptcy Procedure 9006(C) for an Order Shortening Notice Period and Scheduling a Hearing on the Motion of Giovanna Battaglia to (1) Quash the Subpoena Issued by Sonic Arts Entertainment, LLC and the Chapter 7 Trustee; and (2) Further Objecting to the 2004 Motion and Seeking an Order Vacating the Court's Order Granting the 2004 Motion of Sonic Arts Entertainment, LLC and in further support of the underlying Rule 2004 application, states as follows:

1. Mark S. Tulis was appointed interim trustee of Edward F. Miller and now serves as Trustee. He submits this response in opposition to the Motion to Quash the Subpoena and Objection to 2004 Examination (ECF Doc. No. 55) filed by Giovanna Lampo Battaglia ("**Battaglia**") and in response to Debtor's objection to the Bankruptcy Rule 2004 application to examine Ms. Battaglia.

2. In examining the Debtor's financial condition, there is no doubt that Ms. Battaglia is a vital witness.

3. This is the Debtor's second bankruptcy case, which was filed on March 26, 2018. As noted in the Debtor's schedules a previous case in the Northern District was dismissed. The record reveals that the dismissal was for non-cooperation with the Trustee.

4. In the present case, Debtor's original schedules stated that the Debtor pays Ms. Battaglia, with whom he resides, rent of \$7,000.00 per month (which the Trustee alleges on personal belief is substantially above market), home maintenance of \$500.00 per month, electricity of \$1,500.00 per month, plus additional homeowner expenses, for a house owned by Ms. Battaglia.

5. The original Schedules I and J in this case demonstrate excess income of \$9,000.00 per month.

6. In response to the Trustee's questioning the excess income (and lack of any income in the original Schedule I) amended schedules were filed.

7. The amended schedules demonstrate no excess income, but show monthly payments to or on behalf of Ms. Battaglia as follows:

- a. Rent: \$7,000.00
- b. Electricity: \$1,500.00

- c. Water: \$300.00
- d. Food and household supplies: \$1,000.00
- e. Health Insurance: \$1,100.00
- f. Voluntary Support for Ms. Battaglia's children: \$3,500.00

8. It is clear that the Debtor is paying substantial monies to Ms. Battaglia.

The Trustee and creditors are entitled to determine the legitimacy of the expenses, especially in light of the Debtor's failure to attend his 2004 examination, during which such expenses were to be reviewed.

WHEREFORE, it is respectfully requested that the Motion to Quash Subpoena and Objection to 2004 Examination filed by Giovanna Lampo Battaglia be denied.

TULIS WILKES HUFF & GEIGER LLP

Dated: Tarrytown, New York
September 21, 2018

By: /s/ Mark S. Tulis
Mark S. Tulis, Esq., Trustee
220 White Plains Road, 2nd Floor
Tarrytown, New York 10591
(914) 747-4400
mtulis@tuliswilkeslaw.com

cc: Cabanillas & Associates, P.C.
Irene M. Costello, Esq.
Attorney for Debtor
120 Bloomingdale Road, Suite 400
White Plains, New York 10605

Smith, Gambrell & Russell, LLP
John G. McCarthy, Esq.
Attorney for Creditor Sonic Arts Entertainment, LLC
1301 Avenue of the Americas, 21st Floor
New York, New York 10019

Charles A. Higgs, Esq.
Attorneys for non-debtor Battaglia
115 East 23rd Street, 3rd Floor
New York, New York 10010